

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4925 of 1987

For Approval and Signature:

Hon'ble MR. JUSTICE R.K. ABICHANDANI

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mad : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIMBHAI VALI PARBIDIA

Versus

STATE OF GUJARAT

Appearance:

MR V.K. JOSHI for MR MUKUND M DESAI for Petitioner
MR. V.M. PANCHOLI, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 03/11/1999

ORAL JUDGEMENT

The petitioner challenges the revisional order of the Government dated 20th July, 1987, dismissing the revision of the petitioner and confirming the order of the Collector dated 29.7.1986, ordering the resumption of land bearing Survey No.110 admeasuring 9 acres and 3

gunthas of village Dhori in Tal. Vadgam.

2. According to the petitioner, he had purchased land admeasuring 9 acres and 3 gunthas of survey No.110 from the respondents Nos. 3 to 7 and the entry No. 299 dated 20th June, 1983 was made in the Revenue record. The Deputy Collector, Palanpur, gave a show cause notice alleging that the land in question being a new tenure land, could not have been transferred. By his order dated 24.1.1984, the transaction of sale was declared to be invalid and the land was directed to be entered in the name of the Government. The Collector, Banaskantha, by his order dated 30th April, 1984, held that the nature of the holding of the said land was yet to be determined and before that was done, it could not be treated as a service inam land. Thereafter, a revision application was preferred against that order and the revisional authority, by its order dated 30.6.1984, ordered the Deputy Collector to reconsider the matter. Thereafter, the Deputy Collector, on 29.9.1984, directed an enquiry as to in what capacity the vendor was holding the land requiring Mamatdar Vadgam to make a report. On 16th March, 1985, it was held by the Deputy Collector that the transaction could not be regularised under the existing orders of the Government. An appeal was preferred against that order, in which the Collector on 30.4.1985, directed the Deputy Collector to take a decision after determining the nature of holding. Thereafter, the Deputy Collector, by his order dated 7.10.1985, took a decision to regularise the occupation in respect of the land admeasuring 9 acres and 3 gunthas of the city survey No.110. The Collector, Banaskantha, in exercise of his revisional powers, issued notices to the parties for hearing in connection of the order dated 7.10.1985. The Collector found that the said land was service inam land. The service inams were abolished by Section 3 of the Bombay Service Inams Abolition Act, 1953, from the appointed day, which was 1.8.1985 as stated in paragraph 4 of the order of the Collector. The Collector found that the holder of the land in question had not become occupant under the provisions of the said Act and therefore, he did not acquire any right which could be transferred by him in respect of the land in question. The transaction had taken place on 13.6.1983. The earlier resolution of the Government dated 11.6.1968 was modified by the resolution dated 16.3.1986. The Collector found that there was no provision for regularising the earlier transactions. It was found that the occupancy rights of the original holder were not entered in the Revenue records and therefore, such transaction by the holder who had not become an occupant,

could not be recognized. The Collector therefore, directed while cancelling the order of the Deputy Collector dated 7.10.1985 that the land in question should be entered in the name of the Government in the Revenue records. The petitioner challenged this order before the Government and in the Revision Application, the Additional Chief Secretary of the Revenue Department, after hearing the parties, came to a finding on the basis of the record of the case that the land in question which was resumed on abolition of the Service Inam, was not regranted to the holder under the provisions of the Act. It was held that the holder Manji Badha had not made any application for the regrant of land to him. Therefore, the land continued to be of the ownership of the Government and Manjibadha or his heirs could not have transferred the said land to the petitioner. It was held that if the petitioner felt aggrieved by that transaction which passed no title to him in respect of the Government land, his remedy was against the vendors by way of a Civil Court. It was held that in the present case, as the land was not regranted to the holder, there was no question of giving any benefit of the Government resolution dated 5.4.1968. It was observed that if the petitioner's financial condition was weak, then he should approach the Government for help under the schemes set up for amelioration of the economically weaker sections.

On abolition of Service Inam with effect from and on the appointed day, all service inams have been deemed to have been abolished and all incidents appuertaining thereto have been deemed to have been extinguished, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order. It is only by virtue of Section 5(2) that a servie inam land resumed under the provisions of sub-section (1) of Section 5 has to be regranted to the holder on payment of occupancy price equal to six times the amount of full assessment of such land within five years from the appointed day and the holder shall be deemed to be an occupant in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder. In the proviso to sub-section (2) of Section 5, it is specifically stated that if the holder fails to pay the occupancy price within the period of five years as provided in Section 5, he shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily ejected in accordance with the provisions of the Code. In sub-section (3) of Section 5 it is provided that even the occupancy of land regranted under sub-section (2) shall not be a transferable or partible

by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. In view of these provisions, the State Government and the Collector were justified in holding that since the holder had not paid the occupancy price equal to six times, for regrant of land, the land continued to vest in the State Government free from all encumbrances and that the holder never became the occupant. Since the holder was not an occupant, there was no question of regularising the transfer effected by him because he was deemed to be unauthorisedly occupying the land and was liable to be summarily ejected under the proviso to sub-section (2) of Section 5 of the said Act. The impugned orders are therefore made in accordance with law and in lawful exercise of the powers of the revisional and appellate authorities warranting no interference by this Court.

The learned Counsel for the petitioner submitted that the petitioner was a poor person who had invested a large amount. He submitted that the petitioner had no knowledge about the original holder not having become the occupant. It was also submitted that the petitioner was always prepared to pay the requisite amounts for regularisation of the transaction and therefore, his case requires to be considered sympathetically by the Government. The learned Counsel submitted that the petitioner will make a fresh application to the State Government within one month from today for allotment of land to him in accordance with law. The learned Counsel for the respondent authorities states that on such application being made, it shall be sympathetically considered by the concerned authorities, having regard to the facts and circumstances of the case and will be disposed of in accordance with law within two months after it is received.

As the impugned orders have been found to be valid, no relief can be granted in the present petition. Rule is therefore discharged with no order as to costs. Interim relief stands vacated. It will however, be open for the petitioner to make an application for allotment of land in question to him and for the respondent authorities to consider the same sympathetically and make necessary orders. The learned Counsel for the respondent States that since interim relief was operating throughout the period, the possession of the petitioner will not be disturbed provided he makes an application within one month, subject to any order that may be made therein by the respondent authorities.

* / Mohandas